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Westmoreland Libel Case

Seen as Groundbreaker

By Eleanor Randolph
Washington Post Staff Writer

Starched and confident as he stood in a Pentagon briefing room 17 years ago, Gen. William C. Westmoreland showed no visible reservations when he said that peace in South Vietnam "lies within our grasp."

"The enemy's hopes are bankrupt," the commander of U.S. forces in Vietnam assured reporters and their audience of Americans, many troubled and divided by this distant war.

Fifteen years later, in a 90-minute television documentary

called "The Uncounted Enemy: a Vietnam Deception," CBS charged that Westmoreland and other high government officials were conspiring at the time to keep the enemy's actual strength a secret not only from the press and public, but also from the president.

It could be argued, CBS said, that such rosy predictions about the war left Westmoreland's commander in chief, President Lyndon B. Johnson, unprepared for the Tet offensive in January 1968 when the enemy waged a massive guerrilla attack in spite of Westmoreland's rosy predictions that their numbers were waning. Such a tactical blunder, according to CBS, helped lose the larger war for public support.

Now CBS and Westmoreland will defend their versions of this pivotal time in the Vietnam war in a trial expected to become one of the most important and perhaps bitter courtroom dramas of this decade.

It is a battle for reputations, in one sense, as Westmoreland's attorneys accuse the network of bad journalism and CBS lawyers charge that Westmoreland hid the truth about the unpopular war.

But the trial of Westmoreland's \$120 million libel suit against CBS, scheduled to start Tuesday in U.S. District Court in New York, is more than the latest skirmish between titans from the media and the mil-

itary. Some of those observing say the trial could be the first major and official inquiry into this crucial period of the war.

Years and miles from the conflict, scholars for the military and the press also hope for new answers, or at least new perspectives, about whether the war was lost on the battlefield, in the war rooms or during the nightly news.

And, as the inner workings of a major network are revealed, some other issues also could emerge that have become emotional in a society increasingly critical of its press establishment.

For example, can a public official sue successfully over press criticism of his job? Can a journalist have preconceived beliefs about a story? There also is the even larger question of whether the press has become as arrogant now as some in government and the military seemed to be 20 years ago.

"Among the questions in dispute will be whether the high U.S. military command in Vietnam engaged in willful distortion of intelligence data to substantiate optimistic reports of the progress on the war and whether one of the nation's most important distributors of news and commentary engaged in willful or reckless slander," wrote U.S. District Judge Pierre N. Leval, who will try the case.

As Leval explained last month when he reluctantly turned down a request that the trial be televised, the drama to be played out in his courtroom is destined to be "a rare debate and inquiry on issues of highest national importance."

It also could be a rare opportunity for some of the most reluctant managers of the Vietnam war to go on the record in their testimony about one of the war's most crucial periods: the months before the Tet offensive.

The case will feature some of the big names from the Vietnam era,

including television journalism stars. Also important could be some of the usually anonymous military and intelligence people who are expected to tell how they did their wartime jobs.

The lineup of witnesses available for Westmoreland reads like a "Who's Who" of the Johnson administration, including former secretary of defense Robert S. McNamara, former secretary of state Dean Rusk, former CIA directors William E. Colby and Richard Helms, Gen. Phillip B. Davidson, Gen. Joseph A. McChristian and President Johnson's special assistants on national security affairs,

McGeorge Bundy and Walt W. Rostow.

By contrast, CBS has as potential witnesses a number of intelligence analysts who worked for the Army and the CIA in Vietnam and Washington as opposed to the policy-makers who are potential witnesses for the other legal team.

As David Halberstam, author of "The Best and the Brightest" and one of CBS' potential witnesses, said: "What you have here is most of the people who were the sources for those of us covering Vietnam. They are the ones testifying for CBS—the people who actually did what the brass told them."

As the trial nears, it becomes apparent that Westmoreland will try to concentrate on the issue of whether he misled President Johnson, instead of whether he distorted facts to the press, the public and Congress. It also has become clear that the big names have become more important in this trial.

David Boies, the lead attorney for CBS, said at a news conference Friday that the policy-makers from the era will be asked "whether they were part of the deception or part of the deceived."

In many ways, the event that spawned this legal drama was an internal conflict between two arms

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1 October 1984

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WESTMORELAND VS. CBS

Story Behind the Battle

A libel suit now brings to the courtroom this issue: Was the enemy's true strength in Vietnam hidden from Americans? What one inquiry found—

Behind Gen. William C. Westmoreland's 120-million-dollar libel suit against CBS—scheduled to open in a New York court on October 9—is a tangled story of one of the Vietnam War's most bitterly contested and bizarre battles—fought not against the Communists but between Americans.

On one side were top U.S. military leaders in Vietnam. On the other were civilian intelligence officials. Their struggle centered on an issue that seems remote today but a decade and a half ago went to the heart of U.S. strategy in Vietnam: How to measure the nature and magnitude of the Communist threat in the Southeast Asian war.

The controversy was sparked by a Central Intelligence Agency claim in 1967 that Communist forces in South Vietnam were nearly twice as large as was estimated by the U.S. Military Assistance Command, Vietnam—MACV. Westmoreland, commander of U.S. forces in Vietnam from 1964 to 1968, and other top officials rejected the CIA figures as unrealistic. They argued that the intelligence agency included Communist groups that had no offensive military capability and were not "fighters."

The battle over enemy strength raised fundamental questions about the most divisive conflict in American history: Was Westmoreland's strategy of attrition based on inaccurate calculations and therefore doomed from the outset? Were Johnson administration pronouncements of "light at the end of the tunnel" justified? If the CIA figures had been accepted, would support for a continued war effort have collapsed?

The 17-year-old dispute was rekindled by a 1982 CBS-TV documentary, "The Uncounted Enemy: A Vietnam Deception," which alleged that there had been an American military "conspiracy" to suppress intelligence about the true strength of enemy forces. Westmoreland charged that he had been libeled by the broadcast and filed a 120-million-dollar lawsuit against the television network.

He specifically named veteran newsman Mike Wallace, chief correspondent on the documentary, along with two news executives and former CIA analyst Sam Adams, who served as a consultant.

A U.S. News & World Report team has pieced together the complex story of the Vietnam and Washington events involved in the lawsuit.

Challenge From the CIA

On Aug. 19, 1966, a captured enemy document landed on the desk of CIA analyst Adams at agency headquarters near Washington, D.C. From it, he concluded that in South Vietnam's Binhdin Province, irregular enemy forces—both regular guerrillas and local militia—numbered more than 10 times official U.S.

military estimates outside the region. North Vietnamese

Intrigued, he captured documentation to find figures added. Cong irregulars mated. This did not explain where manpower to field army despite section rate."

More research followed, and by January, 1967, the CIA had decided that Adams and other analysts who had reached the same conclusion were correct. Estimates at MACV headquarters of 277,000 Viet Cong in South Vietnam were "far too low and should be raised, perhaps doubled."

Because of the contradictory figures, military and civilian intelligence officials gathered in Honolulu in February, 1967, to standardize production of enemy-strength statistics. A Westmoreland representative was Col. Gains B. Hawkins, chief of order-of-battle estimates, whose own studies indicated "far higher" estimates of enemy strength than official MACV estimates. The two sides agreed that the evidence pointed to large increases in the Viet Cong order of battle.

But Colonel Hawkins's numbers ran into Pentagon flak. A team of analysts from the Defense Intelligence Agency (DIA) thought his estimates for political cadres—the Viet Cong's "shadow" government—too high. The DIA team also considered the techniques used by both Hawkins and the CIA to arrive at Communist strength "tenuous methodology."

The DIA officials recommended dropping certain categories of Communist forces from the military order of battle. In addition to removing the political cadres, DIA sought to exclude the self-defense militia, which were poorly trained, frequently unarmed and contained many old men and women. They did, however, plant many booby traps and mines, which accounted for 20 percent of U.S. casualties.

Key Issue at Heart of Suit

CBS claim: There was "a conspiracy at the highest levels of American military intelligence to suppress and alter critical intelligence on the enemy in the year leading up to the Tet offensive."

—From a Jan. 23, 1982, CBS Report,
"The Uncounted Enemy: A Vietnam Deception."



Wallace

Westmoreland

Westmoreland claim: "The statements . . . were false, unfair, inaccurate and defamatory" and were made "with actual malice; with knowledge that they were false, unfair, inaccurate and defamatory."

—From legal complaint filed by
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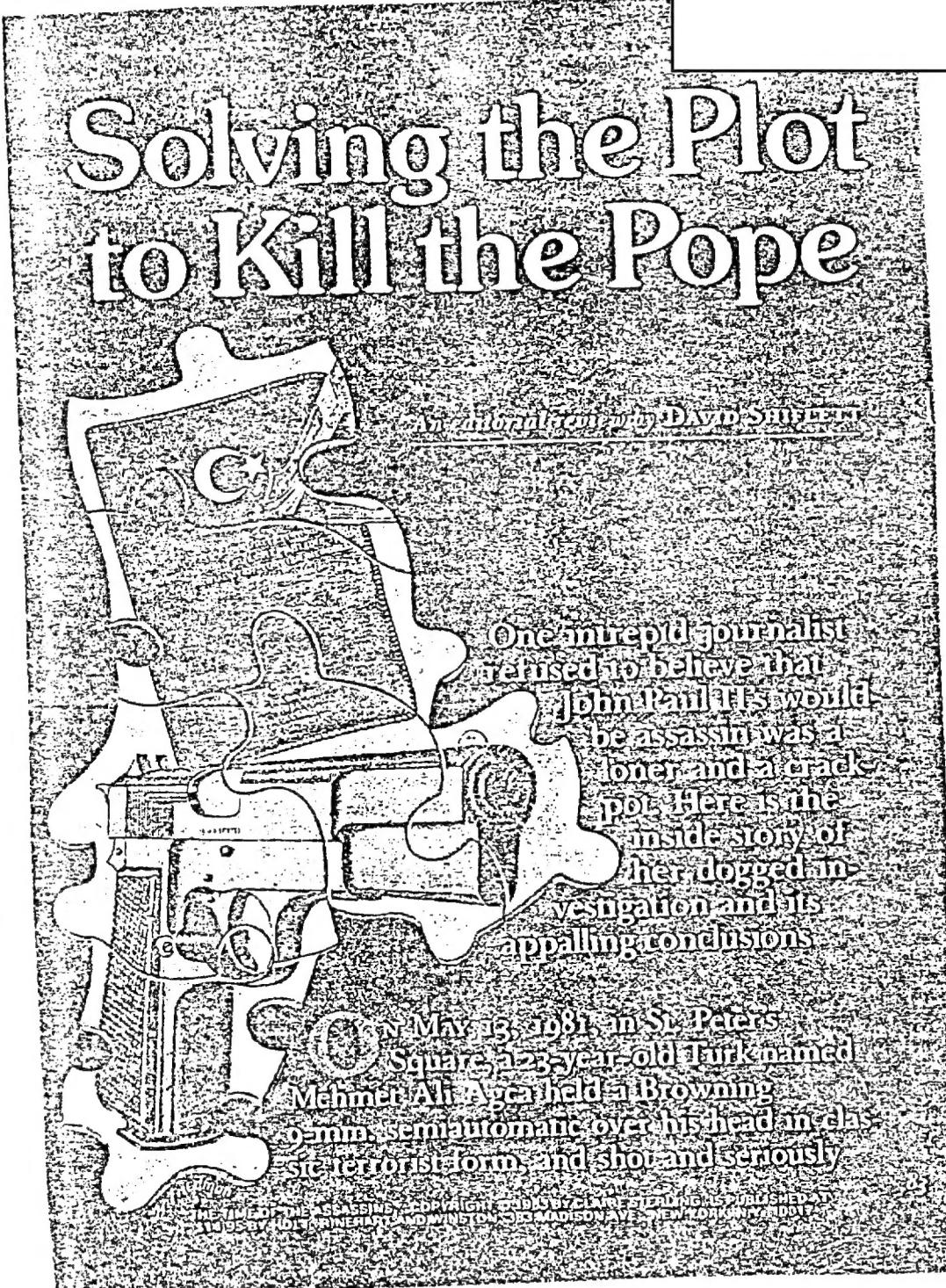


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